IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

CRL.A.No. 544 of 2002()

CC.1381/1998 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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APPELLANT: COMPLAINANT

M.V.VASUDEVAN NAIR, S/O.MADHAVAN NAIR,
DENTIST, OPPOSITE PREMIER TYRES LTD.,
NORTH KALAMASSERY, ERNAKULAM DISTRICT.

BY ADV. SRI.DINESH MATHEW J.MURICKEN

RESPONDENTS: ACCUSED

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1. ANTO KAREDAN, KAREDAN HOUSE,
PUTHIYA ROAD JUNCTION, KUTTIKATTUKARA P.O.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R2-BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 14/03/2007,THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO. 544 OF 2002-A

Dated this the 14th day of March, 2007.

JUDGMENT

This is an appeal filed against the judgment in C.C.No.1381/1998 on the file of the Judicial Magistrate of First Class-II, Aluva. The case projected in the complaint was that the appellant/complainant had issued an amount of Rs.15,000/= to the 1st respondent and in discharge of that amount, the 1st respondent had issued Exts.P1 to P3 cheques for an amount of Rs.5,000/= each dated 10.2.1998. When the cheques were presented for encashment, the same were dishonoured on the ground of insufficiency of fund with the account of the account holder. Complying the statutory provisions regarding notice and on seeing that the 1st respondent had not paid the amount covered by the cheques, the appellant/complainant filed the complaint before the court alleging that the 1st respondent had committed the offence punishable under Section 138 of the N.I.Act, 1881. To prove the case against the 1st respondent, the appellant/complainant himself was examined as PW1 and

produced Exts.P1 to P8. After closing of the evidence of the complainant, the 1st respondent was questioned under Section 313 of the Code of Criminal Procedure. Denying the allegations in the complaint, the 1st respondent had stated that he had borrowed an amount of Rs.50,000/= from the appellant/complainant and at the time of receipt of that amount, he had issued six signed cheques dated 10.2.1998. Out of the above six cheques, the three cheques were utilised by the appellant/complainant for filing a complaint against the 1st respondent, which was tried as C.C.No.548/1998 before the same court and finally that Calendar Case was settled out of court and compromised for an amount of Rupees One lakh. Out of the six cheques issued by the 1st respondent, the remaining three cheques were used by the appellant/complainant for filing this case against the 1st respondent. To prove this case, the 1st respondent himself was examined as DW1 and relied on Exts.D1 to D6(a). On considering the entire evidence, the trial court found that the appellant/complainant failed to prove that the 1st respondent had received any amount for the issuance of the cheques in question viz., Exts.P1 to P3 as a consideration,

and at the same time, the trial court found that the case put forwarded by the 1st respondent is more probable and he had succeeded in proving that the cheques in question, viz., Exts.P1 to P3 were the remaining cheques which he had given during the time of accepting Rs.50,000/= and those cheques were continuously numbered and dated on the same day.

2. This Court heard the matter in detail. The learned counsel appearing for the appellant/complainant submits that the finding of the trial court is not based on any evidence and hence, it requires reconsideration. It is the main contention of the learned counsel appearing for the appellant/complainant that the case settled by the court as C.C.No.548/1998 is relating to a different transaction which involves Rs.1,55,000/= viz., each cheque covers, Rs.One lakh, Rs.50,000/= and Rs.5,000/= respectively, whereas, the amount covered by Exts.P1 to P3 is a different amount which the 1st respondent had received. On considering the evidence adduced by the appellant/complainant and the documents produced by the 1st respondent, it is clear that all the six

cheques involved in C.C.No.548/1999 and Exts.P1 to P3 are issued by the 1st respondent when he accepted the amount from the appellant/complainant. Very interestingly the one fact noted in the complaint filed in C.C.No.548/1998 is that the complaint does not contained the date of the amount accepted by the 1st respondent or given by the appellant. But, in the present case, the date of payment of Rs.55,000/= as claimed by the appellant is a different date. It is clear from the perusal of Exts.P1 to P3 and Exts.D1 to D6 that all those cheques were dated on the same day and they were numbered continuously .

In the above circumstances, it is only proper to hold that all the cheques covered by C.C.No.548/1998 and Exts.P1 to P3 were issued by the 1st respondent at the time when he accepted whatever amount from the appellant. This Court is of the view that the judgment of the trial court requires no interference. Accordingly, the appeal stands dismissed confirming the judgment of the trial court.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

CRL.A.NO.544 OF 2002-A

JUDGMENT

14th March, 2007.